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## Judiciary Committee

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### HB 1362

**Title:** An act relating to conveyances used in prostitution-related offenses.

**Brief Description:** Concerning conveyances used in prostitution-related offenses.

**Sponsors:** Representatives Goodman, Rodne, Sullivan, Williams, Orwall, O'Brien, Kirby, Chase and Conway.

Brief Summary of Bill
<ul style="list-style-type: none"><li>• Allows impoundment of vehicles used in prostitution-related offenses.</li><li>• Allows civil forfeiture of conveyances used to facilitate conduct that results in a conviction of a prostitution-related offense involving a minor.</li></ul>



**Hearing Date:** 1/28/09

**Staff:** Courtney Barnes (786-7194)

**Background:**

Prostitution-Related Offenses

**Commercial Sexual Abuse of a Minor** (formerly Patronizing a Juvenile Prostitute): A person is guilty of Commercial Sexual Abuse of a Minor if he or she pays or agrees to pay a fee to a minor having engaged in sexual conduct, pays or agrees to pay a fee pursuant to an understanding that the minor will engage in sexual conduct, or solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee. Commercial Sexual Abuse of a Minor is a class C felony.

**Promoting Commercial Sexual Abuse of a Minor:** A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct. Promoting Commercial Sexual Abuse of a Minor is a class B felony.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Promoting Travel for Commercial Sexual Abuse of a Minor:** A person is guilty of Promoting Travel for Commercial Sexual Abuse of a Minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in conduct that would amount to Commercial Sexual Abuse of a Minor or Promoting Commercial Sexual Abuse of a Minor. Promoting Travel for Commercial Sexual Abuse of a Minor is class C felony.

**Prostitution:** A person is guilty of Prostitution if he or she engages or agrees or offers to engage in sexual conduct with another person for a fee. Prostitution is a misdemeanor.

**Promoting Prostitution in the First Degree:** A person is guilty of Promoting Prostitution in the first degree if he or she knowingly advances, or profits from, prostitution by compelling a person to engage in Prostitution by threat or force. Promoting Prostitution in the first degree is a class B felony.

**Promoting Prostitution in the Second Degree:** A person is guilty of Promoting Prostitution in the second degree if he or she knowingly profits from Prostitution or advances Prostitution. Promoting Prostitution in the second degree is a class C felony.

**Promoting Travel for Prostitution:** A person is guilty of Promoting Travel for Prostitution if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in Patronizing a Prostitute or Promoting Prostitution. Promoting Travel for Prostitution is a class C felony.

**Patronizing a Prostitute:** A person is guilty of Patronizing a Prostitute if he or she: (a) pays a fee, pursuant to a prior understanding, as compensation for another person having engaged the perpetrator in sexual conduct; (b) pays or agrees to pay another person pursuant to an understanding that the person will engage in sexual conduct with the perpetrator; or (c) solicits or requests another person to engage in sexual conduct with the perpetrator for a fee. Patronizing a Prostitute is a misdemeanor.

### Vehicle Impoundment

Upon an arrest for a suspected violation of Patronizing a Prostitute or Commercial Sexual Abuse of a Minor, the arresting law enforcement officer may impound the person's vehicle if: (a) the vehicle was used in the commission of the crime; (b) the person arrested is the owner of the vehicle; and (c) the person arrested has previously been convicted of Patronizing a Prostitute or Commercial Sexual Abuse of a Minor.

### Civil Forfeiture

There are many civil forfeiture statutes covering a wide variety of topics. Most civil forfeitures occur in the context of criminal violations. For example, the Uniform Controlled Substances Act provides for the civil forfeiture of materials and products used in the manufacture and distribution of illegal drugs. Other subjects involving civil forfeiture provisions include animals, child pornography, cigarettes, drunk driving, driving with a suspended license, explosives, and money laundering. Civil forfeiture statutes generally allow for notice and the opportunity to be heard for the property owner. The standard of proof in civil forfeiture proceedings can be

different from the underlying crime.

### The Prostitution Prevention and Intervention Account

Persons convicted of Promoting Prostitution in the first or second degree, Commercial Sexual Abuse of a Minor, Patronizing a Prostitute, Indecent Exposure, Prostitution, or Permitting Prostitution, are assessed a fee. The fee is deposited into the Prostitution Prevention and Intervention Account, which funds the Prostitution Prevention and Intervention Services Grant Program (program). The program provides funding for programs that provide effective prostitution prevention and intervention services, including counseling, parenting, housing relief, education, and vocational training.

### **Summary of Bill:**

#### Vehicle Impoundment

A local governing authority may designate areas within which vehicles are subject to impoundment when they are used to facilitate the following prostitution-related offenses: Patronizing a Prostitute, Prostitution, Promoting Prostitution in the first degree, Promoting Prostitution in the second degree, Promoting Travel for Prostitution, Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, and Promoting Travel for Commercial Sexual Abuse of a Minor. The arresting law enforcement officer may impound the person's vehicle if: (a) the vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle. A prior conviction of a prostitution-related offense is not a requirement for impoundment if the offense was committed within a designated area. A prior conviction of a prostitution-related offense is a requirement for impoundment if the offense was committed in an undesignated area.

The designation must be based on evidence indicating that the area has a disproportionate number of arrests for prostitution-related offenses compared to other areas within the same jurisdiction of the local governing authority. The local governing authority must post signs at the boundaries of the designated areas to indicate that the area has been designated.

Prior to redeeming a seized conveyance, the owner must pay all applicable impoundment, towing, and storage fees and an administrative fee of \$500. The administrative fee must be deposited in the Prostitution Prevention and Intervention Account. In any proceeding to impound a conveyance where the claimant substantially prevails, the claimant is entitled to a full refund of the impoundment, towing, and storage fees and the \$500 administrative fee.

#### Civil Forfeiture

A local governing authority may designate areas within which conveyances are subject to forfeiture when they are used to facilitate conduct that results in a conviction of one of the following prostitution-related offenses: Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor or Promoting Travel for Commercial Sexual Abuse of a Minor. The designation must be based on evidence indicating that the area has a disproportionate number of arrests for the juvenile prostitution-related offenses compared to other areas within the same jurisdiction of the local governing authority. The local governing

authority must post signs at the boundaries of the designated areas to indicate that the area has been designated.

A conveyance is not subject to forfeiture if: (a) the conveyance was being used as a common carrier and the owner of the conveyance was not a consenting party or privy to the act giving rise to the forfeiture; (b) the act giving rise to the forfeiture was committed without the owner's knowledge or consent; or (c) forfeiture proceedings have not been instituted within 10 days of the owner's conviction. A conveyance subject to a bona fide security interest is subject to the interest of the secured party if the act giving rise to the forfeiture was committed without the secured party's knowledge and consent.

Forfeiture proceedings are initiated by the seizure of the conveyance in question. A conveyance may be seized only after a conviction of a prostitution-related offense involving a minor. The conveyance may be seized by any law enforcement agency of the state upon process issued by the superior court having jurisdiction over the property. Seizure without process may be made if: (a) the conveyance subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding; or (b) a law enforcement officer has probable cause to believe that the conveyance is subject to forfeiture.

Once the forfeiture proceedings have been initiated, the seizing law enforcement agency must provide notice of the seizure to the owner and other persons having an interest in the conveyance, including any community property interest. If no person notifies the agency of his or her claim of ownership within 45 days, the conveyance is forfeited.

If a person does notify the seizing agency of a claim of ownership, the person must be given the opportunity to be heard. The hearing must be in front of an administrative law judge. The person may also remove the proceeding to a district court if the value of the conveyance is more than \$500. In such a proceeding, the law enforcement agency has the burden to prove, by a preponderance of the evidence, that the conveyance is subject to forfeiture. If the person is determined to be the present lawful owner of, or is entitled to possession of, the conveyance, the seizing law enforcement agency must promptly return the property. In such a case, when the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees.

When a conveyance is forfeited, a law enforcement agency may:

- retain it for official use;
- sell that which is not required to be destroyed by law and which is not harmful to the public; or
- request the appropriate sheriff or director of public safety to take custody of the conveyance and remove it for disposition in accordance with the law.

The seizing law enforcement agency must keep a record of all forfeited conveyances. The record must include the identity of the prior owner, a description of the conveyance, the disposition of the conveyance, the value of the conveyance at the time of seizure, and the amount of proceeds realized from the disposition of the conveyance. The seizing agency must maintain the record for seven years and must submit quarterly reports to the Washington State Treasurer.

#### The Prostitution Prevention and Intervention Account

Each seizing agency must annually remit to the Washington State Treasurer an amount equal to

the greater of 10 percent of the net proceeds of any conveyances forfeited during the year or the net proceeds of any conveyances forfeited during the year minus administrative costs. The proceeds remitted to the Washington State Treasurer must be deposited in the Prostitution Prevention and Intervention Account.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2009.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.